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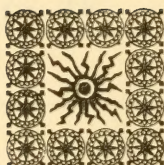
INSTRUCTIONS
TO
FOREST WARDENS.

By I. C. WILLIAMS, Esq.,
of the Department of Forestry.

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Forestry.*

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Pennsylvania Department of Forestry,
Harrisburg, Pa., August 1, 1903.

Sir: I have the honor to submit herewith for publication and distribution among those entitled thereto, what I have called "Instructions to Forest Wardens," prepared under your direction and at your request. It is intended to give those persons employed as care-takers, or wardens, upon the State lands held for Forestry Reservation purposes, such information as they will need with respect to the duties, rights, and liabilities imposed and conferred upon them by reason of the passage by the Legislature of the Act of March 11, 1903, P. L. 25.

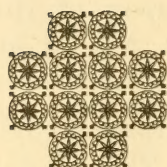
No attempt whatever at technical discussion has been made. The matter has been condensed to the smallest compass thought advisable, with an endeavor to present it in plain narrative, easily comprehended by those not familiar with legal language or forms. It of necessity presents but a constricted view of the law relating to constables.

Very respectfully,

I. C. WILLIAMS.

Hon. J. T. ROTHROCK, M. D.

Commissioner of Forestry.



Instructions to Forest Wardens, who under the
the Act of March 11, 1903, P. L. 25, are
invested with Constabulary Powers.

Among the laws enacted by the General Assembly for the creation and protection of the Forest Reservations, the act of March 11, 1903 is important. The text of the act in full is as follows:

AN ACT

Conferring upon persons employed, under existing laws, by the Commissioner of Forestry, for the protection of State Forestry Reservations, after taking the proper oath of office, the same powers as are by law conferred upon constables and other peace officers; to arrest, without first procuring a warrant, persons reasonably suspected by them of offending against the laws protecting timber lands; also, conferring upon them similar powers for the enforcement of the laws and rules and regulations for the protection of the State Forestry Reservations, and for the protection of the game and fish contained therein; and further, conferring upon them power to convey said offenders into the proper legal custody, for punishment; this act to apply only to offences committed upon said reservations and lands adjacent thereto.

Section 1. Be it enacted, &c., That the persons employed under existing laws, by the Commissioner of Forestry, for the protection of State Forestry Reservations, shall, after taking the proper official oath before the clerk of the court of quarter sessions of any county of the Commonwealth, be vested with the same powers as are by existing laws conferred

upon constables and other peace officers: to arrest on view, without first procuring a warrant therefor, persons detected by them in the act of trespassing upon any forest or timber land within this Commonwealth, under such circumstances as to warrant the reasonable suspicion that such person or persons have committed, are committing, or are about to commit, some offence or offences against any of the laws now enacted or hereafter to be enacted for the protection of forests and timber lands. Such officers shall likewise be vested with similar powers of arrest, in the case of offences against the laws or the rules and regulations enacted or to be enacted for the protection of the State Forestry Reservations, or for the protection of the fish and game contained therein: Provided, That the above mentioned rules and regulations shall have been previously conspicuously posted upon the reservation. Said officers shall further be empowered, and it shall be their duty, immediately upon any such arrest, to take and convey the offender or offenders before a justice of the peace or other magistrate having jurisdiction, for hearing and trial, or other due process of law: Provided further, That this act shall extend only to the case of offences committed upon said Forestry Reservations and lands adjacent thereto; and the powers herein conferred upon said officers shall not be exercised beyond the limits thereof, except where necessary for the purpose of pursuing

and arresting such offenders, or of conveying them into the proper legal custody, for punishment, as aforesaid.

Section 2. All acts or parts of acts inconsistent herewith be and the same are hereby repealed.

Approved—The 11th day of March, A. D. 1903.

SAML. W. PENNYPACKER.

It will be observed that this act confers large discretionary powers as well as important duties upon persons employed by the State Forestry Reservation Commission, in the care of State lands held for Forest Reservation purposes. These persons, while not so designated by the act, are commonly known as Forest Wardens.

Before proceeding to a discussion of the duties and liabilities of Forest Wardens under this law, it may be desirable to consider in a brief manner the office of constable in general, his duties, his qualifications, and his liabilities under existing laws.

The office of constable is an ancient one. His title is derived from the fact that originally he was *Comes stabuli*, count of the stable, chief of the horse, of the ancient military barons and war lords of Europe. The con-

stable of France was a high officer of the crown, and the Lord High Constable of England was the commander-in-chief of the army, the keeper of the peace of the nation. He was also invested with judicial power and regularly held his court for the cognizance of such matters as were within his jurisdiction.

The constable of to-day is still a conservator of the peace within his county. He is the executive officer of a township, a ward, or a borough, but may exercise his authority throughout a county. He is required to execute civil process and every precept directed to him. A constable formerly held his office for a year, but now for three years. He must give a bond for not less than five hundred dollars nor for more than three thousand dollars, unless he is a free holder with unincumbered property of the value of one thousand dollars. The court of quarter sessions of any county may remove a constable from office if it appear upon petition that he is unfit and incompetent to discharge his official duties, or where he shall not have given the security required. He may command others to assist him in making arrests or executing writs, where assistance is needed.

In civil process, the service of a summons is

the most common duty of a constable. A summons is a writ signed, dated, and issued by a justice of the peace, directed to a constable, commanding him to give notice to a person named therein to appear at a certain time and place to answer a complaint. A summons is the method of beginning a civil suit or action at law, and all natural persons, except those exempt, and corporations may be made defendants and served therewith. To every summons there must be a return. This is the report of the constable as to the manner in which he has executed the writ. It must show the date and manner of service, be in writing, and be signed by him.

Certain actions are of the nature of both civil and criminal suits and are begun by *capias* instead of summons. In these cases the body of the defendant is taken, that is, he is placed under arrest. The person arrested must, without unnecessary delay, be taken before a magistrate for hearing, to be followed by a holding to bail, a commitment, or a discharge. The service of a summons or of a *capias* on Sunday is unlawful and void. The constable cannot break an outer door to make service of these writs at any time.

Certain persons are exempt from service of

process by reason of their position. They are ambassadors and public ministers of foreign countries and their employees; members of Congress and State legislators while in attendance upon their public duties; electors, that is, voters, attending elections, going to or returning therefrom; soldiers and militia men during term of service, unless for a debt in excess of \$20.00 contracted before enlistment; parties to a suit, counsel and witnesses in attendance at court, or going to or returning therefrom; jurors, attorneys and agents in attendance upon court; and freeholders having unincumbered real estate to the value of two hundred and fifty dollars, are privileged from arrest.

A constable who has made an arrest on *capias* may take a bail bond for the appearance of the defendant, but he must take sufficient security else he will be liable to the plaintiff. In executing civil process a constable will have other duties to perform. They may consist of making an ordinary levy following a judgment obtained upon a summons, and a sale thereunder; making an attachment execution; the attachment of fraudulent debtors; against non-resident debtors; and domestic attachment; serving distress warrants in land-

lord and tenant cases; executing a writ of possession; making returns to court of unlicensed places where liquors are sold; the illegal sale of liquors by licensed persons; the sale or giving away of liquors on election day, or near militia encampments; attendance on election and the duties incident thereto.

A Forest Warden would probably never be called upon to exercise any of these duties and for that reason no further comment thereon is necessary.

In criminal cases, the duty of a constable is especially to preserve the peace, and make arrests for violation or breach thereof. He has power to imprison and break outer doors when necessary to prevent homicide, riot, or a dangerous breach of the peace. Every person is in morals bound to take notice of violations of law and make complaints thereon; but a constable is legally required to prevent crime and bring the perpetrators to justice.

An arrest is "the apprehending or restraining of one's person, in order to be forthcoming to answer an alleged or suspected crime." It is a literal seizing of the body and the holding of it in custody.

In making an arrest, more than mere words is necessary. It is not sufficient to say, "I

arrest you," or "you are my prisoner," or "I have a warrant for your arrest." But if the person so addressed submits and goes with the officer, the arrest is complete. If the defendant run away and escape without being touched by the constable, there is no arrest. The constable must, therefore, exercise some corporal taking or restraint. A slight restraint, a mere touching, is held to be sufficient. The constable should inform the person whom he takes that he arrests him; but when the arrest is made during the actual commission of an offense, this is not necessary. A constable may use violence in making an arrest but only such violence as is necessary. If the officer in attempting to arrest is resisted by the defendant, he may and must use all the force necessary to subdue his prisoner. If the offense committed or about to be committed is a felony, and the prisoner resists and escapes, the officer, after informing him of his order and intention, may shoot to compel him to stop. If the offense involved is a misdemeanor only, he has no right to shoot a person evading arrest.

Prisoners should be treated fairly and kindly after arrest, and only as much violence used as is necessary to restrain. It is usual and pro-

per to make a search of the person in order to find such evidences of guilt as may be suspected. Property thus taken from a prisoner must be turned over to the magistrate to await the final outcome of the case.

Since the distinction between felonies and misdemeanors affects the officer's power and manner of making arrests, every constable should clearly understand the difference between them. By felonies we understand those heinous and more serious crimes as contra-distinguished from the milder and more trivial kinds, which are called misdemeanors. Originally felonies were those offenses which were punished capitally or by imprisonment, and were accompanied by forfeiture of lands and goods; all others were misdemeanors. Originally, therefore, it was the kind of punishment meted out for an offense which determined whether it fell within one or the other class. This distinction has disappeared in America, and crimes are by express statutory enactment declared to be either felonies or misdemeanors, and the punishment prescribed thereby. No one would undertake to describe a felony or a misdemeanor by exact definition. They are known as such only by statutory enactment and simple enumeration.

The following are felonies: Murder, robbery, larceny, rape, burglary, arson, sodomy, buggery, counterfeiting, passing counterfeit money knowingly, assault and battery with intent to kill, or intent to kill by administering poison, or by stabbing, or other means; shooting or attempting to shoot a person; stabbing with intent to maim or disfigure; explosion of gunpowder or other explosive with intent to harm; or sending any such explosive or other dangerous thing, or throwing at a person any acid or corrosive substance, with like intent; administering chloroform or stupefying drugs in an attempt to commit a felony; procuring an abortion; breaking open by day or by night, with intent to commit a felony, any house, barn, stable, shop, etc.; attempting to wreck a railroad train, or to blow up a house with intent to destroy it or harm persons within.

It will be noticed that the intent is the determining feature of many of the above felonies.. No one can be supposed to be able to read the mind of another, to discover his intent; but it is a safe rule to follow that a person intends the consequences of his act, and when a constable has reasonable ground to suspect the intent of an act and acts accordingly, he will be protected, though mistaken. The

reasonable ground of suspicion should be clear.

The following acts are misdemeanors: The adulteration of goods, candy, liquors, etc., assault and battery with or without a weapon, bribery, corruptly influencing voters, selling votes, selling cigarettes to persons under sixteen years of age, compounding crimes, carrying concealed deadly weapons, conspiracy, cruelty to animals, disorderly conduct, keeping disorderly houses, disturbing public meetings, drunkenness, duelling, embezzlement, corruptly influencing jurors, escape from custody, aiding prisoners to escape, voluntarily or negligently permitting them to escape, carrying dangerous detonating explosives upon public conveyances, selling firearms to persons under sixteen years of age, the manufacture and sale of toy pistols, extortion, false pretense, forgery, fortune telling, gambling, fraudulent insolvency, lewdness, libels, conducting lotteries, malicious mischief and trespass, mayhem, dissemination of obscene literature, maintaining a nuisance, running an opium joint, perjury, prize fighting, profanity, riot, seduction, sending threatening letters, etc.

The offenses enumerated in the various acts of Assembly for the protection of forests and woodlands, and of which the forest wardens

have special cognizance by reason of the act of March 11, 1903, hereinbefore cited, are all misdemeanors.

Arrests are made in two ways, either with or without a warrant. A warrant is a writ, or an authority in writing, issued by a justice of the peace usually, directing and commanding a constable to take the body of the person named therein and bring him before the justice to answer a charge against him. The warrant should give the name and surname of the person to be arrested, or such description as will enable the officer to identify him; it should state the offense committed and be signed by the person issuing it. When executed, the warrant should be returned to the justice showing the manner of execution. When a constable receives a warrant he should proceed to execute it as soon as convenient and with reasonable secrecy. If he refuse to execute it, he is guilty of a misdemeanor. Where the official character of the officer is known to the person arrested, the warrant need not be shown nor need he give notice of his office, but he should state the reason of the arrest. A safe course to follow is to show the warrant if demanded. When arresting a stranger, the constable should either show his warrant or

give notice of his legal authority. A constable should never part with his warrant. If the person inspecting it keep it, the officer may use as much force as is necessary to retake it. A constable may arrest without a warrant any one attempting to commit a felony, or on a reasonable suspicion that a felony has been committed. He may likewise arrest without warrant for breach of the peace committed in his presence; otherwise a warrant must be procured, unless the breach of the peace was committed with intent to commit a felony.

A constable has no right to break open an outer door to execute civil process. Having a warrant for an arrest on the charge of treason, felony or breach of the peace he may break open an outer door to execute it. He has the same right to break open a door to arrest without a warrant, where the arrest is made on his own authority, that he has with a warrant. He should however demand admittance before breaking, as a matter of precaution.

Having made an arrest, a constable must conduct his prisoner before a magistrate for a hearing. The time within which this must be done is not governed by any precise rule. It has been decided that he cannot hold him three days while he is collecting evidence. If

the arrest is made at night, the hearing should be had the next day. If during the day, it should be held that day if the justice can be found before night. In the meantime the constable must keep his prisoner safely. He may confine him in a house, a lockup, or a jail, if one is convenient. If the person arrested be sick, the taking before the justice may be delayed until such time as he may be safely removed. A prisoner is in the custody of the constable until his hearing is concluded.

A warrant of arrest may be executed anywhere within the Commonwealth and the offender carried before the justice or other officer issuing the warrant. When an arrest is made without a warrant and the prisoner carried before the justice, the constable should then make an information giving the reason of the arrest, unless the prisoner waive a hearing and give bail for court.

The foregoing discussion covers in part only the duties of constables, but is believed to be sufficient for the purposes here intended. In case of doubt how to act, a warden will communicate at once with this Department.

It will be noticed that under the act of March 11, 1903, the duties of constables so conferred upon wardens are to be exercised only upon

the State Forestry Reservations or upon the adjacent or immediately adjoining lands. Such violations of law as will most probably come under their immediate official cognizance will be those having to do with trespassing and the inflicting of damage to timber. Under the statutes, these are wilfully setting on fire any woods, lands, or marshes belonging to the Commonwealth, cutting any timber therefrom, cutting or removing boundary trees and land marks, kindling fire on adjacent lands so as to communicate fire to State lands, cutting bark from, burning, or otherwise injuring trees, carrying any lighted candle, lamp, or torch, or other open fire into a forest, setting off fireworks within a forest; or any other act not herein specifically mentioned which will cause damage to forest lands or timber belonging to the Commonwealth.

Before proceeding to exercise his said office, a warden must go before the clerk of the court of quarter sessions of the proper county and take the official oath such as is taken by all constables. He is then invested with full authority under the act, so long as he remains in the employ of the Department of Forestry upon the State lands.

The act provides that arrests may be made in two classes of cases:

1. For those acts prohibited by existing laws now in force or hereafter to be enacted for the protection of forests and timber lands.

2. For violations of the rules and regulations made for the protection of the Reservations, or of the fish and game contained therein.

In the first case, arrests may be made immediately after taking the oath; in the second, the rules and regulations must have been previously conspicuously posted upon the Reservations. The act expressly provides that arrests shall be made for offenses committed upon the Reservations or upon lands adjacent; and that the power of arrest on view without warrant shall not be exercised beyond these limits, except for the pursuit of offenders and the taking of them after arrest into proper legal custody. If an offender be caught in the act, he may be arrested then and there. If the identity of the warden is not known to the person arrested, it should be declared and the official badge exhibited. It is probable that occasionally felonies and other misdemeanors may be committed upon the Forest Reservations. A warden will in such cases be governed by what has been stated above

with respect to constables generally. A reasonable suspicion on the part of the warden that a trespasser is about to commit or has committed a violation of the law, without seeing him in the act, will entitle the officer to make an arrest without warrant; but the circumstances must be such, either from present appearance or from conduct on the part of the person suspected as would lead a reasonable person to suspect that an offense has been or is about to be committed, and by the person suspected. The offense and the person suspected must in some way be connected in the mind of the officer.

Having made an arrest, the warden should take his prisoner before the nearest justice of the peace, or at least the one most convenient to reach. No unusual haste is demanded and no unnecessary delay should intervene. The justice will then proceed to hear the evidence. The warden making the arrest is a competent witness and may testify to all facts within his own knowledge or which he learned upon inquiry. All witnesses having knowledge of the case in hand should be produced and if they refuse to come voluntarily, should be brought under subpoena. If a matter where summary conviction may be had, the justice will, if the

case is sufficiently proved, impose the penalty provided by the acts of Assembly; otherwise he will discharge the prisoner. If a case that is cognizable by the county court, the defendant may waive a hearing and enter bail for court; or after hearing, may be held to bail to answer at court, or he may appeal.

After a prisoner has been sentenced to pay a fine, or in default of payment thereof, to an imprisonment as a punishment for his offense, it is the duty of the constable to take the defendant to the county jail, and by any method most convenient to the officer; and the expense of doing this is a part of the proper expenses of the case. For this purpose the justice will issue a *mittimus* (literally, "we send"), an order to the constable directing him so to dispose of his prisoner. When the latter is safely delivered into the custody of the keeper of the county jail, the duties of the constable are at an end.

Should a warden need assistance in the making of an arrest, he may require bystanders to lend such help as may be needed. Upon their refusal to assist, they may be proceeded against and punished for such refusal.

When attacked, a person has the right to resist in self defense. If a warden in making

an arrest is attacked by his prospective prisoner or any of the latter's associates, he may and must use all possible force in resisting their attack and in his own defense. If it is necessary to take life in defense of one's own life, this is excusable homicide. It is not necessary that the person attacked should first submit to a beating or even worse injury before he acts in his own defense. He is not compelled to retreat as far as he is able before he opposes force with force; but may from the very outset resist and follow up his resistance until he has successfully driven off his assailant, or in the case of a warden, reduced him to subjection and arrest. This view of the law is expressly decided and upheld by the courts of Pennsylvania and by the Supreme Court of the United States. It remains further to say only that while acting in self defense, a warden should use as much deliberation and good judgment as the circumstances of the affair will permit and not follow up any advantage obtained by him, in inflicting grievous and unnecessary injury upon his prisoner.

Under the act of March 30, 1897, all constables are ex-officio fire wardens; and under the act of March 22, 1899, all constables are ex-officio fire, game, and fish wardens. While it

may or may not be a question whether the act of March 11, 1903 confers upon State Forest Wardens the powers contained in the two first mentioned acts, all wardens should be familiar with the provisions thereof and be prepared to report any violations thereof to the proper authorities and insist upon prosecutions in proper cases. Copies of the said acts above referred to and all the acts in force in the State on the subject of Forestry will be furnished each State employe upon Reservations, and the Commissioner of Forestry recommends that by continual study of the same, entire familiarity with their provisions may be acquired. After a reasonable time allowed for study, a regular drill and examination thereon is proposed to be held.

Wardens so invested with authority must use good judgment and employ the dictates of reason so far as it is in their power to do. They must not be needlessly officious nor oppressive in their acts; but while enforcing the laws must employ such sound discretion as will enable them to do their whole duty, preserve the dignity of their official positions, and at the same time, to the end that all citizens may be led to recognize the aims of this Department, advance the Forestry Idea so far as they may be able.



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